THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.NO. 9049 OF 2004

16th December, 2005

Between:

Sushma Khandelwal and another

…Petitioners

A N D

1. Govt. of A.P. rep. by its Secretary,

Transport and Roads and Buildings Department

Secretariat, Hyderabad and others …Respondents

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O R D E R :

1. This writ petition has been filed by the petitioners who are two in numbers with a prayer to issue order or direction preferably a writ in the nature of writ of Certiorari calling for the records relating to Memo No. 7464/P/2003, dated 23-10-2003 issued

by the 1st respondent and quash the same as being illegal, arbitrary and violative of the Articles 14 and 300-A of the Constitution of India as well as contrary to clause 5 of Section 23(1) of the Land Acquisition Act.

2. The petitioners are owners of industries numbering seven located in Survey Nos. 175,183 AA and 186AA of Gollapally Kalan village Shamshabad Mandal, Ranga Reddy District. A notification came to be issued under Section 4(1) of the Land Acquisition Act for acquisition of the said lands. Thereafter, Section 6 declaration came to be issued and ultimately Award came to be passed on 6-11-2002.

3. It is the grievance of the petitioners that the Land Acquisition Officer having called for the report from the Government of India, Ministry of Small Scale Industries, Agro and Rural Industries, Small Industrial Services Institute, Hyderabad not granted costs of shifting, dismantling commissioning of machinery and plant at new place. Hence, this writ petition.

4. Counter affidavit has been filed by the respondents. It is stated in the counter affidavit that a reference has been made to the Civil Court under Section 18 of the Land Acquisition Act. Para 13 of the counter affidavit needs to be noted and it is thus:

> "*It is submitted that the land acquisition in respect of subject lands was initiated in the year 1999 and after giving the notices etc., under L.A. Act the award was passed vide Progs. NO.B/792/2000-1 dated 6-11-2002 awarding land compensation, structures value and trees value existing in the said land as per the L.A. Act. The award was passed about 1 ½ year back and this case was referred to the Civil Courts U/s 18 of L.A. Act. After a lapse of 1 ½ year period the petitioners have filed this Writ Petition with ill motivation to snatch away the Government money. As advised by the Government the petitioners are always at liberty to approach the Civil Court seeking redressal".*

5. Heard learned counsel for the petitioners and learned and learned Senior Counsel appearing for the respondents.

6. Learned counsel for the petitioners submits that the Land Acquisition Officer having called for the report from Government of Andhra Pradesh, Ministry of Small

Scale Industries and Agro and Rural Industries and Small Industries Services Limited, Hyderabad with regard to the costs involved for shifting, dismantling, commissioning of machinery and plant at new place is not justified in granting any amount for expenses towards shifting of the machinersy from the lands under acquisition in the award. In support of his submission he refers the decision of the Madras High Court in ***The Sub-Collector, Dindigul Vs. Smt. Lakshmi Ammal.*** In the cited decision it ha been held as follows:

> "*The question is what is the amount of compensation by way of damages sustained by the person, whose land has been acquired, wherein he was carrying on a business. It maybe in some cases, the land/building acquired are in villages and there arecases where the acquisition is in respect of a propeity situated in town. The State/Invokes the special powers in cases of urgency under Sec. 17 of the Land Acquisition Act. In those cases the possession will be taken early when compared to other cases, We find the Alahabad High Court in the decision referred supra, adopted 20 multiplier on the basis that the net in come is multiplied for the purpose of finding out the capitalized value.*
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> *This Court finds it rather difficult to accept the view of the Allahabad High Court, cited supra. In Koyappaphodi M. Ayisha Umma Vs. State of Kerala, AIR 1991 SC 2027, 1992 LACC 218 SC. The Supreme Court has ruled that when there are standing coconut trees in the acquired land and the value of the lands is assessed on the basis of comparable sale transaction so far as the standing trees are concerned, the same has to be treated only as Timber. But, however, when the compensation is calculated on the basis of yield method, various multipliers are adopted depending upon the standing trees (kind of trees).*
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> *In the present case it is not as if the source of income is destroyed by acquisition. But, the only thing is, instead of carrying on business in the acquired property the business has to be shifted to somewhere else and normally this should mean that it will take some time. Only keeping in mind that loss that may be incurred during that transit period, compensation has to be made. This Court is of the view that grant of six months net income would be a proper compensation in normal cases, where the emergency provision is not invoked. In fact, normally, after Section 6 declaration is made, for the authorities to hold Award enquiry and to take possession, it will take minimum of six months only as the basis of the above*

reasonings this Court is of the view that compensation under the head of loss of earnings should be six months net income in ordinary cases where emergency provision is not invoked. But, however, where the emergency provision is invoked , the Court has to award some more compensation, which should be nine months net income. Needless to mention the burden is solely on the claimant/land owner, who is put to strict proof to the satisfaction of the Court as to what was the net income per month on the date of notification under Section 4(1) of the Land Acquisition Act.

7. Learned Senior Standing Counsel appearing for the respondents submits that the claim made by the petitioners are false and since reference has been made to the Civil Court, the petitioners are at liberty to put in their claim.

8. A fact remains that the Land Acquisition Officer rejected the claim of the petitioners towards shifting charges. Relevant portion of the award passed by the Land Acquisition Officer needs to be noted and it is thus;

"*The attention of the Collector & District Magistrate, Ranga Reddy District is invited to the references cited and he I informed that it is very much there in the provision in Clause 5 of Section 23(1) of the Land Acquisition Act for payment of reasonable expenses to the person interested who compelled to change his residence or place, business, consequent on the acquisition of the land.*

In this case, the transport charges claimed by the individual is on very high side and not reasonable (i.e. about R.s 67.00lakhs) and several times more than the compensation awarded for the land acquired. Since the award has been passed, which is final. At this juncture, there is no other go to claimant, except to seek redressal in the Civil Court if he desires. He is therefore, requested to take action accordingly.

The receipt of this Memo may be acknowledged."

9. It is explicit from the award that the claim made by the petitioners have been rejected. It has also come on record that a reference has been made to the Civil Court under Section 18 of the Land Acquisition Act, in which case it is open to the petitioners to claim the amount towards shifting expenses etc., before the reference Court and reference Court has to adjudicate the matter in accordance with law.

10. Accordingly, this writ petition is disposed of. No order as to costs.

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Justice B.Seshasayana Reddy

16th December, 2005

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